

## REMARKS

Applicant acknowledges receipt of an Office Action dated October 3, 2003. In this response Applicant has amended claims 1, 12 and 15 and added claims 17 and 18. Support for these amendments may be found in the specification, *inter alia*, at page 8, lines 4-10. Following entry of these amendments, claims 1, 3-16 are pending in the application. Claims 12-14 have been withdrawn from consideration. Thus, claims 1, 3-11, 15 and 16 are currently pending and under consideration. Applicant requests rejoinder of method claims 12-14 under the provisions of MPEP § 821.04 upon a finding of allowable product claim(s).

Reconsideration of the present application is respectfully requested in view of the foregoing amendments and the remarks which follow.

**Rejections Under 35 U.S.C. §112, 2<sup>nd</sup> Paragraph**

On page 4 of the Office Action, the PTO has rejected claims 1, 3-11, 15 and 16 under 35 U.S.C. §112, 2<sup>nd</sup> paragraph as allegedly being indefinite. In this response, Applicant has amended independent claims 1 and 15 to recite " $-\text{X}_a-(\text{CO}-[\text{CH}_2]_x-\text{NH})_0-\text{Y}-\text{X}_a-(\text{A}-\text{O})_p-\text{A}-$ " as Formula III where " $\text{X}_a$ , A, x and z have the meanings given above". As noted *supra* support for these amendments may be found in the specification, *inter alia*, at page 8, lines 4-10 and from a reading of the specification as a whole. Applicant submits that one of ordinary skill in the art would readily recognize that the reference to "X" with respect to Formula III encompasses the same groups as  $\text{X}_a$  for Formula I. Applicant notes that the specification includes an example at page 8, line 6, wherein "X" is an -O- which is one of the two groups of  $\text{X}_a$ . Applicant further notes that the compound of Formula I includes portions that are the same as Formula III and that one of ordinary skill in the art would recognize that "X" as used in Formula III would encompass the same groups as  $\text{X}_a$  in Formula I. In addition, Applicant notes that the analogous compound in U.S. Patent 4,501,861 (referenced in the second full paragraph of page 8 of the specification) includes both -O- and -NH- for "X". In view of these Amendments, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejections under 35 U.S.C. §112, 2<sup>nd</sup> paragraph.

### **Double Patent Rejection**

On page 3 of the Office Action, the PTO has rejected claims 1, 3-11, 15 and 16 under judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent 5,773,059 to Delius (hereafter "Delius '059") in view of U.S. Patent 5,612,104 to Grund (hereafter "Grund"). Applicant respectfully traverses this rejection for the reasons set forth below.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 180 USPQ 580 (CCPA 1974). See MPEP §2143.03. Here, neither Grund nor Delius '059, only the claims of which form the basis of this double patenting rejection, taken either individually or in combination, teach or properly suggest a sausage casing comprising copolymers containing the hard aliphatic polyamide blocks and soft aliphatic polyether blocks as recited in independent claims 1 and 15. Applicant further notes that Grund is cited with respect to the shrinking properties of a sausage casing upon heating. Block copolymers as recited in present claims 1 and 15 are not disclosed or contemplated in this reference. Accordingly, the outstanding rejection is improper and should be withdrawn.

If an independent claim is nonobvious under §103, then any claim depending therefrom is nonobvious. *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988). See MPEP 2143.03. Thus, Applicant submits that claims 3-11 and 16, which ultimately depend from either claim 1 or claim 15, are also non-obvious.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of this rejection under §103.

### **Newly Added Claims 17 and 18**

In this response, Applicant has added claims 17 and 18 which are directed to preferred embodiments of the presently claimed invention. These preferred embodiments are discussed in the specification, *inter alia* at page 8, line 6. Applicant submits that claims 17 and 18 are allowable for the same reasons as independent claims 1 and 15 from which these dependent claims respectively depend.


### CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully submits that all of the pending claims are now in condition for allowance. An early notice to this effect is earnestly solicited. If there are any questions regarding the application, the Examiner is invited to contact the undersigned at the number below.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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By  \_\_\_\_\_

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